

401 KAR 40:020. Inspections.

RELATES TO: KRS 224.10, 224.46, 224.99

STATUTORY AUTHORITY: KRS 224.46-520

NECESSITY, FUNCTION, AND CONFORMITY: KRS 224.10-100 requires the cabinet to inspect any property or premises for the purpose of investigating either actual or suspected sources of pollution or contamination or for the purpose of ascertaining compliance or noncompliance with KRS Chapter 224 or the administrative regulations promulgated pursuant thereto. This chapter establishes standards for enforcement and compliance monitoring of hazardous waste. The enforcement and compliance monitoring standards of this chapter are for those activities and hazardous waste sites or facilities regulated pursuant to 401 KAR Chapters 30 through 47. This administrative regulation establishes standards for inspections and notification of deficiencies.

Section 1. Inspections. In accordance with the provisions of this chapter, the cabinet shall conduct or cause to be conducted such inspections, studies, investigations or other determinations as it deems reasonable and necessary to obtain information and evidence with which to ensure that solid waste and hazardous waste sites or facilities are conducted in accordance with the provisions of KRS Chapter 224, 401 KAR Chapters 30 through 47, and all terms and conditions of any permit.

(1) The secretary or any duly authorized representative of the cabinet upon presentation of proper identification and authority may:

(a) Enter any premises registered to generate hazardous waste, any permitted hazardous waste facility, any permitted solid waste facility or any premises or facility that the cabinet has reasonable cause to believe is generating hazardous waste or constitutes an unpermitted solid or hazardous waste facility, inspect the premises, and gather evidence on existing conditions and procedures;

(b) Obtain from any permittee, or from any permitted or unpermitted premises, representative samples of waste or any material believed to be polluting or contaminating the environment;

(c) Conduct tests, analyses and evaluations to determine whether the requirements of the waste management administrative regulations and KRS Chapter 224 are being met;

(d) Obtain samples of any containers and photographs or facsimiles of container labels;

(e) In the event that any samples are obtained prior to leaving the premises, a receipt describing the samples obtained shall be given to the owner, operator, or agency in charge and if requested, a portion of each such sample equal in volume or weight to the portion retained. A copy of the results shall be furnished to the owner, operator or agency in charge if an analysis is made.

(f) Inspect and copy any pertinent records, reports, information or test results relating to the requirements of 401 KAR Chapters 30 through 47;

(g) Question any person found on the premises, including employees or agents of the owner, operator or agency in charge of the premises, concerning their duties, responsibilities, past activities or any other matter relating to the requirements of 401 KAR Chapters 30 through 47; and

(h) Enter and inspect any other premises in accordance with the requirements of KRS 224.033(10).

(2)(a) A report listing any deficiencies found during the inspection shall be prepared by the inspector and shall be kept on file in the cabinet. A copy of the report shall be provided to the owner or operator or his agent immediately upon completion of the inspection when the owner or operator is present during the inspection. Otherwise a copy of the report shall be mailed to the owner or operator, or his agent, at the address specified on the registration, permit application or other document supplied to the cabinet by the owner or operator, or, when applicable, to the address of the unauthorized owner or operator when his identity and address is discovered.

(b) Authorized representatives of the cabinet shall make and maintain written records of inspections and other activities including observations made and factual matters discovered. A copy of

such record shall be made available to the owner or operator and shall be available for public inspection at the main office of the Division of Waste Management in accordance with the Kentucky Open Records Law, KRS 61.870 through 61.884.

(c) Upon inspection of a facility, authorized representatives of the cabinet shall collect evidence of every observed violation of a permit condition or requirement of KRS Chapter 224 or administrative regulations promulgated pursuant thereto.

(d) The cabinet shall preserve collected evidence, where appropriate, in order that such evidence may be presented at hearings held pursuant to 401 KAR 40:030.

Section 2. Timing and Conduct of Inspections. (1) Right of entry and access. Authorized representatives of the cabinet shall have unrestricted right of entry and access to all parts of the permit area for any purpose associated with their proper duties pursuant to KRS Chapter 224 and 401 KAR Chapters 30 through 47, including but not limited to the purpose of making inspections.

(2) Presentation of credentials. Authorized representatives of the cabinet shall present credentials for identification purposes upon request by a representative of the owner or operator.

(3) Prior notice. The cabinet shall have no obligation to give prior notice that an inspection will be conducted.

(4) Timing. Inspections shall ordinarily be conducted at irregular and unscheduled times during normal workdays, but may be conducted at night or on weekends or holidays when the department deems such inspections necessary to properly monitor compliance with KRS Chapter 224, 401 KAR Chapters 30 through 47, and conditions of the permit. It shall be the responsibility of the owner or operator to notify the cabinet at least five (5) working days prior to crucial phases of the facility construction. Crucial phases of facility construction include, but are not necessarily limited to, liner installation, well drilling leachate collection system installation, and any other phase of construction identified in the conditions of the permit.

Section 3. Deficiencies. The cabinet shall notify the owner or operator of any noncompliance with the requirements of KRS Chapter 224, 401 KAR Chapters 30 through 47, with guidelines adopted pursuant thereto, or with conditions of the permit by utilizing one (1) of the means described in this section.

(1) The inspection report shall serve as notice to the owner or operator that a deficiency has occurred. The inspection report may list a date on which the owner or operator (or his agent) can reasonably be expected to correct the deficiency.

(2) The secretary or any duly authorized representative of the cabinet, upon determining that a violation of any requirement of 401 KAR Chapters 30 through 47; KRS Chapter 224, a permit condition or order of the secretary has occurred or is occurring may require the owner or operator to submit to the cabinet a plan of correction to be implemented within a time acceptable to the cabinet.

(3) If the owner/operator fails to accomplish an agreed upon step in the plan of correction within the time period specified, or correct a deficiency by a reasonable correction date set by the inspector as provided in subsection (1) of this section, the secretary may take action to modify, suspend, discontinue, or revoke the owner or operator's permit(s), or seek any other remedy provided in 401 KAR 40:040.

(4) The supervisor of any regional field office maintained by the Division of Waste Management may hold field office conferences with the owner or operator (or his agent) of a site or facility affected by the requirements of 401 KAR Chapters 30 through 47 or the provisions of KRS Chapter 224 dealing with waste management or disposal practices, for the purpose of determining a reasonable date for correcting a deficiency discovered by inspection and handled according to subsection (1)(b) of this section. The exact nature of the violations discussed during the conference and the dates for correcting those violations shall be set out in writing and signed by the inspector, the field office su-

pervisor and the owner, operator or agent attending the conference if the parties attending the conference reach an agreement as to correction dates. This document shall then become a permit condition of the owner or operator's permit or permit-by-rule. (6 Ky.R. 479; 666; eff. 6-4-1980; Recodified from 401 KAR 2:065, Sections 2 and 3, eff. 3-1-83; 10 Ky.R. 162; eff. 12-2-1983; Crt eff. 10-9-2018.)